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| 10/532,353 | 07/05/2005 | Mattias Nystrom | 38148 | 9063 |
| 116 7590 07/21/2009 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108 | | | | |
| EXAMINER | | | | |
| ALIE, GHASSEM | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,353

Applicant(s)

NYSTROM ET AL.

Examiner

GHASSEM ALIE

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 16-18, 22, 23, 25 and 27-40 is/are pending in the application.
- 4a) Of the above claim(s) 16-18, 25, 27, 31 and 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 22, 23, 28-30, and 32-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

1. Applicant's election of invention ID (claims 22 and 23) in the reply filed on 11/12/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It should also be noted that new claims 32-40 also has been added to the list of the claims by a supplemental amendment filed on 02/26/09. Claims 32-36 also read on the elected invention ID which includes claims 14, 22, 23, and 28 and 30. Therefore, claims 32-36 also will be examined with the elected invention ID. It should be noted that claims 35-36 are drawn to a pivotal connection for the pivotal elements that includes a supporting section (20) extending from the second handle portion 16 and provided with a pocket (21), as set forth in elected invention ID (claims 22-23).
2. Claims 16-18, 25, 27, 31 and 37-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions IA-IC, there being no allowable generic or linking claim. It should also be noted that claim 29 now depends from claim 28 and it will be examined. It should be noted that claims 37-40 are drawn to pivotal connections that are set forth in claims 17 and 18 and different that the pivotal connection set forth in the elected invention ID.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the safety button 13 connected to the handle section 16 via a supporting section 20 and a separate metallic or plastic pin 31; and the throttle lever 12 secured to a plastic pin 31, a pin 25 extending from the handle

section 16 and a supporting section 20 as set forth in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It should be noted that every claimed Species or embodiment has to be shown in the drawings. The specification may contain many embodiments that are not shown in the drawings. However, when those embodiments are claimed, they must be shown in the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 14, 22-23 and 28-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 14, “each of the pivotal elements being directly pivotally coupled to only the second handle section (16), and indirectly coupled to the first handle section (15)” is not disclosed in the specification. The specification does not disclose how the pivotal elements are not directly coupled to the first handle section (15). For example, pin 25 extends transverse direction to the contact surface between the two handle sections. The circle-shaped edge 34 in the first handle portion 15 acts as a support for the pin 25. See page 5, lines 19-21 and 31-34 in the specification. There is clearly direct coupling of the pivoting elements to the first handle portion 25. The specification does not disclose what is considered to be “a direct coupling” of the pivoting elements to one of the handle portions and what is considered to be “an indirect coupling” of the pivoting elements to the other handle portions.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 14, 22-23, 28-30 and 32-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 14, “each of the pivotal elements being directly pivotally coupled to only the second handle section (16), and

indirectly coupled to the first handle section (15), so that the functions of the pivotable elements are separated from the alignment of the first handle section (15) relative to the second handle section (16)” is not clear and accurate. Firstly, it is not clear how the pivotal elements are not directly coupled to the first handle section (15). For example, pin 25 extends transverse direction to the contact surface between the two handle sections. The circle-shaped edge 34 in the first handle portion 15 acts as a support for the pin 25. See page 5, lines 19-21 and 31-34 in the specification. There is clearly direct coupling of the pivoting elements to the first handle portion 25. The specification does not disclose what is considered to be “a direct coupling” of the pivoting elements to one of the handle portions and what is considered to be “an indirect coupling” of the pivoting elements to the other handle portions. Secondly, it should be noted that the position of the handle 15 or 16 does not changed, since both handle sections 15, 16 are secured together. Therefore, functions of the lever and the button cannot be independent or separate from one of the handle sections, since both handle sections are permanently joined together. The specification also does not disclose how the alignment of the first and second handle portions is separated from the functions of the pivoting elements. Will the pivoting elements function the same if the first handle section 15 is aligned or attached to the second handle section 16 in manner that the free movements of the pivoting elements are prevented? In other words, functions of the lever and button cannot be independent or separate from the alignment of the handle sections 15, 16, since the handle sections could be permanently joined together in a manner that at least limits the movements of the lever and/or the button. For example, if the handle section 15 is permanently attached to an element of the lever 12 such as arm 17, the lever 12 will not function properly.

Regarding claim 22, “the openings (22)” lacks antecedent basis.

Regarding claims 32, “the lever or button is secured to only one of the handle sections (16) so that the function of the lever or button is independent of the handle sections (15, 16) position in relation to each other” is confusing. It is not clear how the function of the lever or button is independent from the handle sections opposition relative to each other while the lever is secured to one of the handle sections (16) and the handle sections are permanently welded or glued together as a single piece. Therefore, functions of the lever and the button cannot be independent or separate from one of the handle sections, since both handle sections are permanently joined together. The specification also does not disclose how the alignment of the first and second handle portions is separated from the functions of the pivoting elements.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 32 and 33 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe et al. (5,738,064), hereinafter Lowe, in view of Nakayama (5,517,967). Regarding claims 32 and 33, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48,

50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teaches that that lever or button is secured in only one of the handle sections so that the function of the lever or button is independent of the handle sections position in relation to each other. However, Nakayama teaches a handle 12 including two handle portions 12a. Nakayama also teaches a lever 20 and a lever lock or safety button are pivotally attached to only one of the handle portions 12a, so that the functions of the pivotable elements 38, 40 are separated from the alignment of the first handle section relative to the second handle section. It should be noted that the lever 20 is secured to the handle section 12a via a supporting section extending from the handle section 12a. It should be also noted that the handle inherently has a support member with a hole for receiving the pin 14. See Fig. 1 in Nakayama. See Figs. 1-3 and col. 3, lines 36-40 in Nakayama. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, with the pivoting mechanism, as taught by Nakayama, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts.

10. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe in view of Nakayama, as applied to claim 32, and in further view of Wolf (5,215,049).

Regarding claim 34, Lowe does not explicitly teach that the button stops the operator from

increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. However, Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that lever 16 and the button 17 are pivotally secured to a handle. Wolf also teaches that the button 17 stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf. It would have been obvious to a person of ordinary skill in the art to provide Lowe's apparatus, as modified above, with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

11. Claims 14, 22, 23, 30, 35 and 36, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe et al. (5,738,064), hereinafter Lowe, in view of Nakayama (5,517,967) and in further view of Yoho (3,494,431). Regarding claims 14, 22-23, 35, and 36, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teaches that that lever and the button or the pivoting elements are directly pivotally coupled to only the second handle section, and indirectly coupled to the first handle section so that the functions of the pivotable elements 38, 40 are separated from the alignment of the first handle section relative to the second handle section. However, Nakayama teaches a handle 12 including two handle portions 12a. Nakayama also teaches a lever 20 and a lever lock or safety button are pivotally attached to only one of the handle portions 12a, so that the functions of the pivotable elements 38, 40 are separated from the alignment of the first handle section relative to the second handle section. It should be noted that the lever 20 is secured to the handle section 12a via a supporting section extending from the handle section 12a. It should be also noted that the handle inherently has a support member with a hole for receiving the pin 14. See Fig. 1 in Nakayama. See Figs. 1-3 and col. 3, lines 36-40 in Nakayama. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, with the pivoting mechanism, as taught by Nakayama, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts.

Lowe, as modified by Nakayama, does not explicitly teach a specific pivotal connection of the pivoting elements to the second handle section. For example, Lowe, as modified by Nakayama, does not explicitly teach a pivotal connection that includes a support section with a pocket, and a locking pin acting as an axle for the pivotable element and inserted in a hole in the pivoting element. However, the use of different securing means or mechanisms for a trigger lever, button, or the like is old and well known in the art. In this

case, e.g., Yoho teaches a handle section 54B has a support section in a shape of a pocket. Yoho also teaches a pin 45 is inserted through the hole of a trigger 44 and in the two openings of the support section or the pocket. Yoho also teaches that the diameter of the hole is larger than the diameter of the locking pin. See Fig. 6 in Yoho. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified above, with a fastening or securing means, as taught by Yoho, in order to secure the lever to the second handle section by an alternative mechanism that produces the same result and pivotally connects the lever to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

Regarding claim 30, Lowe teaches everything noted above including that the handle sections 48, 50 are made of plastic material and permanently joined together either by welding or gluing. See col. 3, lines 6-16 in Lowe.

12. Claims 28 and 29, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe in view of Nakayama and Yoho, as applied to claim 14, and in further view of Wolf (5,215,049). Regarding claims 28 and 29, Lowe does not explicitly teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. However, Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that lever 16 and the button 17 are pivotally secured to a handle. Wolf also teaches that the button 17 stops the operator from increasing

the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf. It would have been obvious to a person of ordinary skill in the art to provide Lowe's apparatus, as modified above, with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

Response to Amendment

13. Applicant's arguments with respect to claim 14, 22, 23, 28-30, and 32-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alie/

Primary Examiner, Art Unit 3724

July 17, 2009